IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1956.

No. 313

BROTHERHOOD OF RAILROAD TRAINMEN, etc., et al.,

Petitioners,

vs.

CHICAGO RIVER AND INDIANA RAILROAD COMPANY, et al.,

Respondents.

PETITIONERS' REPLY BRIEF.

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Prefatory Reference To the Briefs of Amici Curiae.

Excellent briefs filed on behalf of the Brotherhood of Locomotive Engineers and the Railway Labor Executives' Association, *amici curiae,* in which compelling use is made of much legislative history, lighten our task in this Reply Brief.

We adopt without repetition the compendium of legislative history encompassed in those briefs.

I.

IT WAS NOT THE PURPOSE OF THE NATIONAL RAILWAY LABOR ACT TO INTERDICT STRIKES OF ANY KIND, WHETHER OVER "MAJOR" OR "MINOR" GRIEVANCES. HAD SUCH PROHIBITION BEEN THE INTENT OF CONGRESS, IT WOULD HAVE FOUND CLEAR EXPRESSION IN THE ACT.

This is not a case that arises from the ambiguous periphery of a statute of which the main intention is clear but as to which marginal cases raise difficulty, as, for instance, is often the case in which Congress has intended to regulate an area of interstate commerce, it being unclear precisely what the boundaries of that area are.

On the contrary, it was, as we not only concede but strongly emphasize, the dominant purpose of the act to prevent strikes in the interstate commerce of railroad.

The question before Congress—*and the question was the central question, not a marginal one*—was whether the prevention of as many strikes as possible should be accomplished by categorical prohibition of strikes or affording a tribunal whose determinations were to be conclusive as a matter of law without, however, prohibiting strikes on the part of employees who were willing to forego all right of award before such board or in the courts.

This brings us at once to a question of the meaning of the word "compulsory" as used by us in our original brief, in the legislative history, in the briefs of respondents and *amici curiae* and in this Reply Brief.

Since the word "compulsory" is relative in its meaning, we are brought at once to its significance in the context of legislative history.

In petitioners' original brief we have said (pp. 10, 13 and elsewhere) that it was the intent of the Railway Labor Act to afford "attractive *but not compulsory* administrative apparatus for the resolution" of minor grievances. In respondents' brief, the statement is frequently made that resolution of minor grievances by adjustment under the act is "compulsory."

Petitioners' statement that the act is not "compulsory" and respondents' statement that it is "compulsory" in application to minor grievances are not, however, stark contradictions of each other. The word "compulsory" is used in different senses.

In one sense, of course, the act is indeed "compulsory"—that is to say, if a railroad employee refuses to submit to the process of adjustment established by the act, he loses his right to sue in the courts, state or federal, and may (the point is not involved in this case) forfeit valuable contractual rights under his contract.

This "compulsion" is very real.

To this extent, the carriers are correct in their contention that the act is "compulsory" and if our original brief conveys a contrary impression, we correct that impression now.

It does not follow, however, that strikes over minor grievances are made unlawful.

An incisive analogy makes our point clear:

Most State Workmen's Compensation laws are "compulsory" in the sense that an injured workman who does not avail himself of their provisions has no remedy in the courts or before any other administrative tribunal. In this sense such laws are "compulsory"—that is, they leave the employee no forum other than the statutory commission in which to assert and recover upon his claim. But such stat-

utes, we submit, do not prohibit expressly or impliedly, strikes to compel settlements of claims. The members of a local chapter may refuse to work in the future unless provision is made for injuries sustained by members in the past.

Indeed, so effective is the "compulsory" force of the Railway Labor Act that its object, the discouragement and minimization of strikes over all types of grievances, has been achieved with eminent success. Railroad employees do not lightly forego their own pay envelopes in order to vindicate the particular claims of fellow members.

But the question before the court in this case is not whether the act is "compulsory" in the sense of affording a tribunal whose jurisdiction is exclusive and whose determination are conclusive. The question is whether the Railway Labor Act prohibits the right to strike over minor grievances.

Respondents do not because they cannot refute petitioners' demonstration that the question whether strikes should be prohibited was in sharp focus, not in the penumbra, of Congressional attention when the Act was under consideration.

In the legislative hearings (House Committee on Interstate and Foreign Commerce, 73rd Cong. 2nd Sess. on H. R. 7650) at page 61, is reported the following colloquy between Congressman Wolverton and Commissioner Eastman:

> "Commissioner Eastman: . . . Now, *the only question I am in doubt about is whether or not there should be an injunction under this Act to prevent a strike. Now, I am not clear about that.*
>
> "Mr. Wolverton: Do you think that there should be such a provision in the bill?
>
> "Commissioner Eastman: *I would rather see it carried out without that, because I do not believe you are going to have that question arise.*

"Mr. Wolverton: Do you consider it better policy to leave it out—

"Commissioner Eastman: Well, no particular question has been raised about this matter of enforcement. p. 62:

"Mr. Wolverton: *Let us first have a frank understanding as to whether it [a prohibition against strikes] is included or is not included in the bill and then we can determine the policy as to whether it should be or should not be in the bill;* but it certainly seems to me that the bill ought not to be left indefinite either from the standpoint of the carriers or the standpoint of the employees. We should know just what the situation is."

The truth is that Congress, although its attention was explicitly called to the question of whether strikes should be prohibited, deliberately refused to include such a prohibition in the bill that passed.

It is not enough to say, as respondents say, that "the 1934 Amendment Specifically Repeals Earlier Inconsistent Statutes" (*respondents' brief*, p. 75). This proposition begs the very question. *If* the purpose of the act was to reinvest federal courts with authority to enjoin strikes over minor grievances, repeal by any language, general or specific, was unnecessary. If that was not the purpose of the act, then the Norris-LaGuardia Act is unaffected.

However, the general provision repealing earlier inconsistent statutes (Railway Labor Act, Sec. 8, 48 Stat. 1197, 45 U. S. C. 161) is not without relevance. It shows that even when Congress was considering the matter of repeal in the light of discussion as to whether injunctions should become available, it forbore any explicit repeal or emasculation of the Norris-LaGuardia Act.

In the light of these considerations, Congressional intention should not be gleaned or divined from this court's ex-

pressions, none of which involve a suit by a carrier to enjoin a strike, or by ambiguous legislative history.[1]

This court's attention is respectfully called to the now-pending *Manion* v. *Kansas City Terminal Railway Company* case, No. 702, in which the Court of Appeals of the State of Missouri, the highest tribunal in that state in which a decision could be had, has sustained the jurisdiction of a state court to enjoin a strike called because employees subject to the Railway Labor Act who work overtime contend that under an applicable contract overtime work constitutes the starting of a second shift, wherefore they are entitled to an extra day's pay, the carrier contending that the contract entitles them to overtime pay only for hours actually worked. In that case neither the carrier nor the union has submitted any grievance to the adjustment board. The opinion of the Court of Appeals of Missouri is reported in 290 S. W. (2d) at page 63, and is printed in the petitioners' appendix here.

While the writ of *certiorari* has not been granted and we do not propose to argue the *Manion* case in this Reply Brief, that case does emphasize the fact that strikes, although called over past grievances, are not, as respondents seek to persuade the court, necessarily disputes over "minor" or "particular" grievances but set patterns of precedent in industry that, although involving the construction of the

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[1] The distinction between the kind of problem of statutory construction presented in this case and that presented in most cases is made clear by the following examples:

There is no doubt that the Federal Employers Liability Act is intended to protect railroad workers engaged in interstate commerce. Many questions have arisen as to whether a particular employee is engaged in interstate commerce. If the case is fairly debatable, it is probable that none of the members of Congress voting for or against the bill had the particular problem in mind. Construction consists merely in applying an evident policy to a case that was not clearly contemplated.

In this case, however, the question of whether the right to strike should be prohibited was the essence of the debate.

existing rather than the fashioning of new contracts, may well be more important than so-called "major" grievances.

II.

EVEN IF THE RAILWAY LABOR ACT DOES PROHIBIT STRIKES, IT DOES NOT FOLLOW THAT FEDERAL COURTS ARE INVESTED WITH JURISDICTION TO ENJOIN SUCH STRIKES.

Respondents make no effective demonstration that even if Congress intended to prohibit strikes over past grievances, it intended a surreptitious repeal of the Norris-LaGuardia Act.

The failure of the spokesmen for the act to include a provision for such repeal when the matter was specifically called to their attention affords virtual assurance that in their judgment the inclusion of such provision would have defeated the act.

Well nigh conclusive demonstration that the Railway Labor Act of 1934 did not enact a prohibition of strikes, whether over "major" or "minor" grievances and whether arising from past claims or demands for the future, inheres in the fact that in 1950, the Donnell bill (Senate S. 1950, number 3463), which would by Section 10a have interdicted strikes of the kind involved here, *failed to pass.*

Surely this bill was unnecessary if such strikes were already forbidden.

Congress has long pondered the matter of the right to strike *versus* economical and industrial stability not only in the field of railroading but in all other fields.

It can hardly be supposed that Congress would undertake to abridge this right without saying so. It is not, as

the respondents argue, a question of comparing and reconciling the two statutes. Congress has plainly forborne repeal of the Norris-LaGuardia Act.

But if the two statutes are to be reconciled the reconciliation is not a difficult task.

Even if the Railway Labor Act prohibits strikes, it does not follow that Congress intended those strikes to be enjoined.

Congress may well have intended such prohibition to be implemented in proceedings in which the defendant unions and members would have such rights as trial by jury in civil and criminal proceedings and that they should not be exposed to an injunction granted by a single judge.

Conclusion.

For reasons urged in petitioners' original brief and in the briefs of *amici curiae* referred to above and this Reply Brief, we respectfully submit that judgment of the Court of Appeals for the Seventh District be reversed and the original judgment of the District Court which denied injunction should be reinstated.

Respectfully submitted,

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